

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**CIVIL NO. 3:03CV550
(3:97CR54-1 & 3:98CR220-1)**

JOHN DALEY STRASSINI,)
)
Petitioner,)
)
Vs.) ORDER
)
UNITED STATES OF AMERICA,)
)
Respondent.)
)

THIS MATTER is before the Court on the Petitioner's motion to reconsider or, in the alternative, a notice of appeal. The Court construes the motion as one for a certificate of appealability.

The motion to reconsider is denied without discussion. As for the notice of appeal, it appears that the Defendant is correct in his allegation that he was not served with the Judgment dismissing his motion pursuant to 28 U.S.C. § 2255 until August 25, 2006. As a result, the Court finds that his attempt to file a notice of appeal is not untimely. However, he should have filed a motion for a certificate of appealability and, therefore, the notice of appeal is so construed.

An appeal may not be taken to the Court of Appeals from the denial of a motion pursuant to 28 U.S.C. § 2255 unless a certificate of appealability has been issued. **28 U.S.C. § 2253(c)(1)(B)**. Such a certificate may not issue unless the applicant has made a substantial showing of the denial of a constitutional right. **28 U.S.C. § 2253(c)(2)**. The Petitioner has not made such a showing.

IT IS, THEREFORE, ORDERED that the Petitioner's motion to reconsider is hereby **DENIED**.

IT IS FURTHER ORDERED that the Petitioner's notice of appeal, construed as a motion for a certificate of appealability, is hereby **DENIED**.

Signed: September 19, 2006



Lacy H. Thornburg
United States District Judge

